



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Application 364 of 2009

IN THE MATTER OF THE ADVOCATES ACT (REMUNERATION ORDER)

AND

IN THE MATTER OF HIGH COURT SUCCESSION CASE NO. 1830 OF 1999

IN THE MATTER OF THE ESTATE OF JOHN NGUGI KIMANI

NJIIRI KANYIRI & THUKU ADVOCATESAPPLICANT

VERSUS

ADMINISTRATORS OF THE ESTATE OF JOHN

NGUGI KIMANI –DECEASED.....1ST RESPONDENT

PAUL NJOROGE NGUGI.....2ND RESPONDENT

JAMES GITAU NGUGI.....3RD RESPONDENT

PRISCA NYAKAIRU NGUGI..... 4TH RESPONDENT

LUCY WANGUI NGUGI.....5TH RESPONDENT

JOHN NGUGI WARINGA.....6TH RESPONDENT

RULING

By this application, the Applicant prays for judgment in terms of the certificate of costs dated 14th June, 2012. It is made by a Notice of Motion dated 29th June, 2012 and taken out under **Section 5 (2)** of the **Advocates Act** and **Section 3A** of the **Civil Procedure Act**.

The application is supported by the annexed affidavit sworn on 29th June, 2012 by Bernard Muriuki Kanyiri, Advocate and is based on the grounds that the certificate of taxation was issued against

the Respondent on 14th June, 2012 for a sum of Kshs. 13,863,538/=. It is also the Applicant's contention that the said certificate of taxation has not been challenged, altered or set aside by the court, and that there is no dispute as to the retainer between the Respondents and the Applicant.

At the oral canvassing of the application, Mr. Gatheru appeared for the Applicant but the Respondent's counsel did not attend. A close scrutiny of the affidavit of service upon the Respondents shows that the Respondents were served on 20th July, 2012, for hearing on 31st July, 2012. Seeing that this was sufficient time for the Respondents to attend court, but they did not do so, the court proceeded *ex parte*.

Mr. Gatheru told the court that the application was for judgment in terms of the certificate of costs and asked the court to grant the order as prayed.

I note that the application is premised on **Section 51 (2)** of the **Advocates Act**. Under that provision of the law, the certificate of the taxing officer by whom any bill has been taxed is final as to the amount of the costs covered thereby, unless it is set aside or altered by the court. However, I also note from the court file that there are two pending applications whose outcome might affect this application. The first one is an application by Paul Njoroge Ngugi, the 2nd Respondent, brought by Chamber Summons dated 18th June, 2012 seeking the ruling and order of the Taxing Officer to be set aside. It has been given a date for hearing on 26/9/2012. The 2nd application is brought by the 4th, 5th and 6th Respondents by way of a Chamber Summons dated 20th June, 2012. It seeks orders to set aside both the ruling made by the Deputy Registrar on 6th June, 2012 and the certificate of taxation issued on 11th June, 2012. It further seeks an order that there was no retainer between the Applicants and the Respondents. It is scheduled for hearing on 3rd October, 2012.

Against that background, I don't find it prudent to give a ruling in the application dated 29th June, 2012. The delivery of the said ruling is accordingly stayed pending the hearing and determination of the aforesaid 2 applications.

DATED and DELIVERED at NAIROBI this 1st day of October, 2012.

L.NJAGI

JUDGE



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