

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 455 OF 2010

CANUK HOLDINGS LIMITED.....PLAINTIFF

VERSUS

PRAMOD PATEL T/A PRAMOD PATEL ADVOCATES.....1ST DEFENDANT

ENOCK TUITOEK.....2ND DEFENDANT

MAURICE ALDOUS OPAR.....3RD DEFENDANT

RULING

The plaintiff's suit was dismissed by Kamau J in a ruling delivered on 25th February, 2020. Aggrieved by the said decision the plaintiff filed the Notice of Appeal on 13th March, 2020.

There is now before me an application by way of Notice of Motion dated 1st November, 2020 for the substantive order that there be a stay of execution of the orders made on 25th August, 2020 to the extent of taxing the bill of costs dated 18th May, 2020 pending the hearing and determination of the appeal.

There is also a prayer that there be a stay of taxation of the said bill of costs, pending the hearing and determination of the appeal. The application is based on the grounds set out on the face of thereof and the supporting affidavit sworn by Zoher Pirbhai.

The application is opposed and there is a replying affidavit sworn by Pramod Patel, the 1st defendant. Both parties have filed submissions relating to the application which I have considered. The bill of costs has not been taxed.

It is common practise that, any party aggrieved by an order on taxation may move to the High Court by way of reference under the procedure provided in the law. That step comes into operation only after the taxation has been completed. My understating of the said provision is that, until taxation is completed the High Court may not interfere with the process of taxation which is before the taxing master. I find support in the ruling of Koome J (as she then was) in the case of **Fulchand M. Shah v Punachand J Shah and 6 others [2010] e KLR**.

The present application is brought under Order 51 Rule 1, Order 42 Rule 6 (5) of the Civil Procedure Rules, Sections 3A and 63 (e) of the Civil Procedure Act. There is nowhere in the record that the process of execution has been commenced and in fact may not be commenced before taxation is completed.

The application in my view is therefore premature, notwithstanding the anxiety that has been expressed by the plaintiff. In the event the plaintiff wishes to challenge the process of taxation, then the same can be lodged before the taxing master.

I am unable, in view of the record before me, to allow the application which is hereby dismissed with no order as to costs. Right to apply is however reserved.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF APRIL, 2021.

A. MBOGHOLI MSAGHA

JUDGE

In the presence of:

Mr. Kyobika for the 1st and 2nd Appellants/Applicants

Mr. Kamau holding brief for A.B Shah for the Respondent