



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**MISCELLANEOUS CIVIL APPLICATION NO. E140 OF 2018**

**VAGHJIYANI ENTERPRISES LIMITED.....APPLICANT**

**-VERSUS-**

**OSUNDWA & COMPANY ADVOCATES.... RESPONDENT**

**RULING**

1. This ruling relates to two (2) applications, namely;

a. The application dated 8<sup>th</sup> November 2019 (hereinafter “the first application”) wherein the applicant/advocate seeks orders that: -

**1. Judgment in the taxed sum of kshs 4,533,120 be entered against the respondent.**

**2. The applicant be awarded interest of 14% per annum on the judgment sum from 23<sup>rd</sup> September, 2019 until payment in full.**

**3. A decree be issued in respect of the Certificate of Taxation dated 23<sup>rd</sup> September, 2019 and that the applicant be at liberty to execute for recovery of the same in such manner as a Decree of this Honourable Court.**

**4. The respondent be ordered to comply with the certificate of Taxation dated 23<sup>rd</sup> January, 2019 within 7 days from the date of the order.**

**5. The costs of this application be borne by the respondent.**

b. The application dated 27<sup>th</sup> February 2020 (“the second application”) wherein the client seeks orders to stay the advocate’s aforementioned application dated 8<sup>th</sup> November 2019 pending the hearing and determination of Miscellaneous Application E421 of 2019. The client also seeks to stay the execution of the ruling on taxation delivered on 17<sup>th</sup> July 2019, to set aside the said ruling on taxation and an order directing that the advocate’s Bill of Costs be taxed afresh with appropriate directions before a different Taxing Master.

2. The first application is premised on the grounds that the Taxing Master already rendered a ruling allowing the advocates –client Bill of Costs in the sum of Kshs 4,533,120 after which a certificate of costs was issued for the said amount on 23<sup>rd</sup> September 2019. It is the advocate’s case that since the certificate of costs has not been set aside and/or altered by any court, the said certificate is final and that the advocate should be allowed to proceed and realize the taxed costs.

3. The second application, on the other hand, is premised on the main ground that the client filed a reference dated 23<sup>rd</sup> September 2019 challenging the ruling on taxation which reference is yet to be determined by the court. It is the client’s case that the reference will have an impact on the first application.

4. Parties canvassed the two applications by way of written submissions which I have considered. I find that the issue in dispute in the two applications is straight forward. While the advocate’s application for judgment on the taxed costs is based on the ground that certificate of the taxed costs has not been challenged, the client contends that it filed a reference on 23<sup>rd</sup> September challenging the said taxed costs. I have perused the client’s annexure marked “LB111” being a copy of the chamber summons application dated 23<sup>rd</sup> September 2019 challenging

the ruling on taxation delivered in 17<sup>th</sup> July 2019. The existence of the said reference was not disputed by the advocate.

5. My finding is that in the circumstances of this case, it will only be fair and just that the reference be heard and determined first before the advocate's application dated 8<sup>th</sup> November 2019 can be heard.

6. Consequently, I allow the application dated 27<sup>th</sup> February 2020, albeit partly, in the following terms:

**a. There shall be a stay of execution of the ruling on taxation delivered on 17<sup>th</sup> July 2019 pending the hearing and determination of Miscellaneous Application E421 of 2019.**

**b. I make no orders as to costs.**

**Dated, signed and delivered via Microsoft Teams at Nairobi this 22<sup>nd</sup> day of October 2020 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17<sup>th</sup> April 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Miss Nasimiyu for Osundwa for the applicant.

Miss Naswa for Mosi for respondent.

Court Assistant: Silvia