



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 49 OF 2016

OTIENO, RAGOT& COMPANY ADVOCATES.....APPLICANT

VERSUS

NATIONAL BANK OF KENYA LIMITED.....RESPONDENT

RULING

By a notice of motion dated 7.3.17, brought under Section 51 of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

a. THAT the certificate of costs dated 20.2.17 in respect of the taxation order made on 20.2.17 for the sum of Kshs. 1,032,418.46 be adopted as judgment and decree of this Honourable Court

b. THAT the applicant be awarded interest accrued on the costs at 14% per annum from 12.06.16 until payment in full

c. THAT the costs of this application be borne by client/respondent

The motion is premised on the grounds on the body of the application and the supporting affidavit of David Otieno, Advocate of the High Court of Kenya, sworn on 8.3.17. He averred that the applicant filed an Advocate-Client Bill of Costs which was taxed at Kshs. 1,032,418.46 and a certificate of taxation was issued for the said sum. That the Respondent has not paid the said amount and the applicant requests for judgment for the entire sum.

The application is opposed by the Replying Affidavit of Steven Oigo, the Kisumu Branch Manager of the respondent sworn on 3.3.17. He avers that there was a retainer agreement as shown by letters marked **SO-1 (a), (b), (c) and (d)** exchanged between the applicant and the respondent and that the same were not taken into account when the applicant's bill was taxed. He further avers that the respondent filed an application marked **SO-2(b)** in the Court of Appeal **Civil Application No. 23 of 2017 (UR 14/17)** and that by an order issued on 9.3.17 annexed and marked **SO-2(a)**, the taxations between the applicant and the respondent have been stayed.

When the application came up for hearing on 19.4.17; Mr. Otieno, advocate for the applicant and Mr. Ojuro, advocate for the respondent made lengthy oral submissions and referred to numerous authorities.

I have considered the notice of motion in the light of the affidavits on record and submissions made for both parties. Before I delve into the issue of considering the merits of the application; it is my most overriding duty to consider the effect of the stay order on these proceedings.

Annexure **SO-2(a)** to the replying affidavit confirms that on 9.3.17 a consent stay order was granted in **Civil Application No. 23 of 2017 (UR 14/17)**. Mr. Ojuro for the respondent submitted that the applicant has not moved the Court of Appeal to lift the stay order and further that the orders that will be issued by the Court of Appeal will affect all matters between the applicant and the respondent. On the other hand Mr. Otieno for the applicant submitted that there was no reason to stay the application.

I have perused application marked **SO-2(b)** in the **Court of Appeal Civil Application No. 23 of 2017 (UR 14/17)**. The application sought various orders among them:-

“That pending the hearing and determination of this appeal, this Honourable Court be pleased to stay all taxations and/or references pending before the High Court of Kenya as between Otieno, Ragot& Company Advocates and National Bank Of Kenya Limited”.

As stated hereinabove; the application was allowed by consent. In my considered view, the grant of an order of stay has the effect of temporarily discontinuing all taxations and/or references pending before the High Court of Kenya as between the parties herein until the appeal arising from **High Court Misc. Civil Cause No. 10 of 2016** is heard and determined.

From the foregoing; I find that it would be an exercise in futility for this court to proceed to determine the merits of the application herein whose outcome might be affected by the decision of the Court of Appeal. Court orders are not made in vain. It was appreciated by **Ojwang, J** (as he then was) in ***B vs. Attorney General [2004] 1 KLR 431*** that:

“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.

The upshot of the foregoing is that the notice of motion dated 7.3.17 is stayed pending further orders and/or direction of the court in **Court of Appeal Civil Application No. 23 of 2017 (UR 14/17)**.

DATED AND DELIVERED THIS 22ND DAY OF JUNE 2017

T.W.CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant	- FELIX
Plaintiff	- Mr. Otieno for Appellant
Defendant	- N/A for respondent