



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPLI. NO. 590 OF 2014

OMULELE & TOLLO ADVOCATES..... APPLICANT

V E R S U S

MAGNUM PROPERTIES LIMITED.....RESPONDENT

RULING

1. Omulele and Tollo Advocates, the applicant herein took out the motion dated 19.4.2016 in which it sought for inter alia

1. ***THAT judgement be and is hereby entered in favour of Omulele & Tollo Advocates in the amount of Kshs.33,321,431.00 against Magnum Properties Limited.***
2. ***THAT the sum of Kshs.33,321,431.00 be paid with interest at 9% per annum from 19th April, 2016 until payment in full.***
3. ***THAT costs of this application be borne by the respondent herein.***

2. The motion is supported by two affidavits sworn by Velma Okoth

Magnum Properties Ltd, the respondent herein, filed the replying affidavit of Ashok Doshi to oppose the motion.

3. The respondent also took out the motion dated 17.5.2016 in which it sought for the following orders inter alia:

- a. ***This application be certified urgent and heard on priority basis.***
- b. ***The plaintiffs application (NOTICE OF MOTION) dated 19th April, 2016 scheduled to be heard on 19th May, 2016 be suspended/stayed pending the hearing and determination of this application inter-partes.***
- c. ***The honourable court be pleased to suspend/stay the plaintiffs application (NOTICE OF MOTION) dated 19th April, 2016 scheduled to be heard on 19th May 2016 pending the hearing and determination of a reference (Application for Review) of the ruling in respect of the certified costs in favour of the plaintiff.***
- d. ***The honourable court do o make such orders as it deems fit and just/convenient to meet the ends of justice in the circumstances of this case.***
- e. ***Cost of this application be provided for and borne by the applicant/respondent.***

4. The motion is supported by the affidavit of Ashok Doshi. When the two motions came up for interpartes hearing, this court gave directions for the same to be heard together. Though the applicant had not file a formal response to the motion dated 17.5.2016, it was nevertheless allowed

to make oral submissions.

5. In the motion dated 19.4.2016, the applicant is basically seeking for entry of judgement in terms of the certificate of taxation which shows that the bill of costs was taxed at ksh.33,321,431/=. It is the submission of the applicant that the bill of costs was taxed by the Deputy Registrar and therefore there is need to enter judgement in favour of the applicant pursuant to the provision of Section 51 of the Advocates Act. The respondent on the other hand is of the view that the prosecution of the applicant's motion dated 19.4.2016 should be stayed pending the hearing and determination of a reference which it intends to file to challenge the taxed costs. The respondent stated that it has commenced the procedure of challenging the decision on taxation under paragraph 11 of the Advocates (Remuneration) Order and it is only awaiting to be given the reasons by the taxing officer. The respondent argued that if judgement is entered in terms of the taxed costs it would suffer substantial loss in that the applicant is likely to execute the resultant decree. Mr. Tollo, learned advocate for the applicant opposed the respondent's motion claiming that there is no threat by the applicant to execute the decree because none has been extracted. The learned advocate further argued that there is no evidence that the respondent has requested the taxing officer for reasons.
6. I have carefully considered the material placed before this court plus the rival oral submissions. There is no doubt that the aim of the applicant intends to obtain judgment in terms of the taxed costs so that it eventually extracts a decree for purposes of execution. There is therefore the danger that the decree may be executed before the respondent's intended reference to challenge the taxed costs is heard and determined. With great respect, the argument of Mr. Tollo that there is nothing to stay is not true. If the order to stay further prosecution of the motion dated 19.4.2016 is not given, the respondent will suffer substantial loss in that the respondent will have lost the chance to challenge the taxed costs.
7. The other question which was left to this court to decide is whether or not the process of challenging the taxed costs has begun. I have seen a letter addressed to the Deputy registrar. The letter is questioning the decision in some items namely item no. 1, the instructions fees and item no. 6. The law requires the taxing officer to forward the reasons justifying the decision on costs. As to validity or otherwise of the procedure used, it is not within the realm of this court to determine but the court hearing the reference.
8. In the end I find that it is necessary to first hear and determine the respondent's motion dated 17.5.2016. In the circumstances of this case, it is only fair and just to issue stay which I do an order for further proceedings of the motion pending the hearing and determination of the respondents intended reference against the taxed costs. It is important to note that the decision to issue an order for stay of proceedings is aimed at avoiding a situation where decree arising from taxation proceedings which are subject to review/appeal by way of a reference.
9. In the final analysis, an order for stay of proceedings on the motion dated 19.4.2016 is given to last for 90 days and pending the hearing and determination of the intended reference.
10. Costs of the motion shall await the outcome of the intended reference.

Dated, Signed and Delivered in open court this 27th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent