



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Application 784 of 2007

**IN THE MATTER OF AN APPLICATION BY KENYA COMMERCIAL BANK LIMITED FOR
LEAVE TO APPLY FOR ORDERS OF PROHIBITION**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER SECTIONS 8
AND 9 OF THE LAW REFORM ACT AND ORDER LIII CIVIL PROCEDURE RULES**

**IN THE MATTER OF AN INTENDED INVESTIGATION OF ACCOUNT NUMBER 15 043 651
017 AT KENYA COMMERCIAL BANK LIMITED**

**IN THE MATTER OF AN ORDER ISSUED BY THE CHIEF MAGISTRATE'S COURT AT
KIBERA ON THE 14TH DAY OF JUNE 2007**

BETWEEN

KENYA COMMERCIAL BANK LIMITEDAPPLICANT

VERSUS

THE COMMISSIONER OF POLICE1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

BENJOH AMALGAMATED LIMITED3RD RESPONDENT

RULING

By way of a chamber summons dated 8th September, 2010 and filed in court on 10th September, 2010 Kenya Commercial Bank the ex-parte applicant in this case (Misc. Application No. 784 of 2007) prays for orders which includes the following:-

- (a) That pending the hearing and determination of the Objection to Taxation filed herein, this Honourable Court be pleased to order stay of execution of the Ruling of the Deputy Registrar dated 30th August, 2010.**
- (b) That pending the hearing and determination of the objection to taxation in HCCC No. 1576 of 1999 filed separately, the decision of the learned Deputy Registrar dated 30th August, 2010 be stayed upon such terms and conditions as this court may prescribe.**

The application is brought under Order 21 Rules 22(1), 25 and 91 of the Civil Procedure Rules which were replaced by the Civil Procedure Rules 2010 and Section 3A of the Civil Procedure Act. The main grounds in support of the application are that the applicant has filed on objection to the taxation of the respondent's bill by the Deputy Registrar and that the respondent herein owes the applicant Kshs.632,537 being costs awarded to the applicant in H.C.C.C. No. 1576 of 1999. The application is also supported by an affidavit sworn by Chris Theuri an employee of the applicant.

The respondent (Benjoh Amalgamated Limited) opposed the application through a replying affidavit sworn by Samuel Kungu Muigai on 15th September, 2010 and grounds of opposition dated 16th September, 2010. The respondent faults the procedure adopted by the applicant in bringing its application before the court. The respondent argues that the applicant ought to have made a reference to the High Court as provided by the Advocates Act.

There are two broad issues to be addressed in this ruling namely:-

- (1) Whether the applicant's application is properly before the court, and
- (2) Whether the applicant has established grounds for granting a stay of the Deputy Registrar's decision.

In attacking the procedure adopted by the applicant, the respondent's counsel referred this court to the decision of Ringera, J (as he then was) in **MACHIRA & CO ADVOCATES VS. MAGUGU EALR (2002) & EA 428**. The relevant holding in reference to this case is found at page 433 where Ringera, J stated that :-

“First the Advocates Remuneration Order is a complete code and there is no provision for the invocation of the Civil Procedure Rules Secondly, as I understand the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the Judge in accordance with paragraph 11 of the Advocates Remuneration Order.”

I am in agreement with the holding of Ringera J and find that the applicant before me ought to have made a reference to a Judge against the decision of the Deputy Registrar. Any stay of execution ought to have been sought in the reference. That is the way to go about any complaint relating to taxation of a bill of costs.

Even if the applicant is properly before this court, I would still have found that its application is incompetent. The bill of costs which is the subject matter of this application arose from judicial review proceedings. Judicial review proceedings are special in nature and are governed by the Law Reform Act and Order 53 of the Civil Procedure Rules. The other orders of the Civil Procedure Rules are not applicable. See the ruling of R.P.V. Wendoh, J delivered in this case on 7th December, 2007. Any application in judicial review proceedings is brought under the Law Reform Act, Order 53 of the Civil Procedure Rules or the invocation of the inherent powers of the court. The applicant's application therefore fails in that it is brought under the wrong law.

If the applicant had surmounted the first hurdle, I would have granted it the prayers sought for the simple reason that it has a claim for legal fees against the respondent in H.C.C.C. 1576 of 1999. The respondent will have the costs of this application.

Dated and signed at Nairobi this 24th day of January , 2012

W. K. KORIR
JUDGE