



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 81 OF 2005

**ONSANDO OSIEMO T/A ONSANDO OSIEMO &
COMPANYPLAINTIFF**

VERSUS

**KENYA UNION OF SAVINGS AND CREDIT CO-OPERATIVES
LIMITED.....DEFENDANT**

RULING

1. The chamber summons dated 30th August 2010 is taken out by the defendants who seek for several orders. However during the hearing of this application counsel for the applicant told the court that his client wished to abandon prayer No.3. The substantive prayers that were argued are numbers 4 and 5 as follows:-
 4. THAT, the Honorable court be pleased to enlarge time and/or grant leave to the defendant to raise objection to the Party and Party Taxation Order dated 27th May, 2010 out of time.
 5. THAT, the Honorable court be pleased to grant stay of execution pending determination of objection proceedings to party and party taxation order.
2. The application is supported by the affidavit of Kenneth Kimaiyo sworn on 30th August 2010. The main grounds that can be discerned from that affidavit are that the order of taxation made on 27th May 2010 is irregular and unlawful and the defendant/applicant should be granted leave to object to the same. Counsel for the applicant submitted that the bill of costs as drawn amounted to Ksh.609, 427/- yet the bill of costs was taxed for Ksh.1.372,909/- which clearly shows there is an error on the face of the record which should be corrected.
3. It was further argued that leave should be granted to enable the applicant file an objection to the bill

of costs as provided for under rule 11 of the Advocates Remuneration Order. The respondents would not suffer any prejudice because the applicant was willing to deposit the sum of Ksh.960,726/- in the joint names of the two advocates. He confirmed that they are seeking for a stay of execution so as to challenge the interest awarded on the decretal sum but not regarding the taxed bill. Counsel also submitted that stay of execution can be granted on any sufficient cause being shown to court.

4. This application was opposed; **Mr. Tiego** learned counsel for the respondent relied on grounds of objection on points of law. He submitted that the court has no jurisdiction to grant the orders as sought. Principally the applicant sought for an order of injunction thus the application which was brought under the provisions of order 39 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act should fall by the wayside. Similarly, since the prayer for injunction was abandoned, it follows that prayer Nos 4 and 5 which are now pursued in this application have no substratum.

5. The advocates Remuneration Order especially rule 11 which gives jurisdiction to this court to enlarge time within which to raise an objection against a taxation, has not been followed. This is for reasons that firstly a notice is supposed to be given to the taxing officer seeking for reasons for the order of taxation. Secondly, upon reasons being given, a party can file a reference before a judge by way of a chamber summons seeking for an order to upset the taxation. It is also provided that a party can seek leave to enlarge the time to file a reference out of time. In this case the applicant has not given notice seeking for reasons therefore they have jumped the gun and proceeded to seek leave. It was submitted that the application should be dismissed. As regards the order of stay of execution it was further argued that under the Advocates Remuneration order no stay of execution is provided.

6. This is an omnibus application, which is also slovenly drawn. It seeks for several orders; firstly the prayer for injunction was abandoned leaving the prayer for enlargement of time within which to file an objection against the taxation of the party and party bill of costs. The other prayer seeks for stay of execution pending the determination of the objection proceedings. An application for enlargement of time is provided for under rule 11 of the Advocates Remuneration Order. It is provided that any party wishing to object to the decision of the taxing officer may give notice in writing within 14 days to the taxing officer and indicating the items which are objected to. Secondly, the taxing officer is obliged to forward the reasons for the decision within 14 days. The person objecting is supposed to file an application by way of chamber summons setting out the grounds of his objection. The High court is also given powers to enlarge the time within which to give notice and within which to file an objection.

7. There is no indication that this applicant gave notice to the taxing officer as required under rule 11 (1) of the Advocates Remuneration Order. I agree with counsel for the respondent that this court cannot give leave to file an objection which indeed cannot be filed unless if the notice had been issued as provided for under the remuneration order. In other words giving leave to file an objection when a notice has not been issued is an exercise in futility. On the issue of stay of execution counsel for the applicant submitted that it was stay on the execution pending the determination of the interest chargeable? This means that this is an application for stay of execution as provided for under order 41 of the Civil Procedure Rules. However the applicant did not establish whether they have filed an appeal and they did not establish the other conditions set out under order 41(4) of the Civil Procedure Rules. Moreover an application for stay of execution should be made by way of notice of motion and not a chamber summons. In view of the above I find the application dated 30th August 2010 lacking in merit and I hereby dismiss it with costs to the respondent.

RULING READ AND SIGNED ON 28TH DAY OF JANUARY 2011 AT NAIROBI.

M.K. KOOME

JUDGE

