



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 292 OF 2008

HEZEKIAH W. GICHOHIPLAINTIFF

VERSUS

UHURU HIGHWAY DEVELOPMENT & ORS..... DEFENDANTS

RULING

Coram : Mwera J

Kibe N/A for plaintiff
Kalove for 1st defendant
Mbaluto for 2nd defendant
Mubea for 3rd defendant
Njoroge Court Clerk

On 12/10/10 the court was informed that the plaintiff had filed a notice of motion dated 29.9.10 to stay taxation proceedings against him.

Mr. Mubea for the 3rd defendant told the court that he had filed a preliminary objection to that notice of motion to the effect the court had no jurisdiction to stop the said taxation proceedings. It was then undertaken by consent that the said preliminary objection could be heard by way of written submissions on 9.12.10. No proceedings went on then but when they got under way on 20.10.11 Mr. Murgor for Mr. Kibe for the plaintiff informed the court that their submission on the objection had been filed.

Mr. Kalove for the 1st defendant told the court that his client and the 2nd defendant supported the 3rd defendant's preliminary objection and Ms Ogula appearing for that party informed the court that a submission on their preliminary objection had been filed. The parties were granted opportunity to highlight their respective submissions on 1.2.11. That was not to be on two other occasions because Mr. Kibe who was more keen on that course did not appear. So on 4.2.11 the court decided that a ruling would be drafted without highlights from the plaintiff.

On that occasion again the 1st and 2nd defendants supported the preliminary objection. Then Mr. Mubeya informed the court that the plaintiff had not filed any submission regarding the objection but he had instead submitted on his notice of motion dated 29.9.10. To counsel, this meant that his client's objection was uncontested.

The preliminary objection under review was dated 7.10.11. A copy thereof was not readily

available on the file but its initiator, the 3rd defendant, stated in its submission something to the effect:

1) that this court has no jurisdiction to stay proceedings in respect of taxation before a taxing officer.

It was contended that that officer's special jurisdiction was derived from the provisions of paragraph 11 of the Advocates (Remuneration) Rules. And when the taxing officer is in the process of exercising that power the court cannot interfere unless at the end of it a reference is made to it.

To support that position the two High Court cases of **Fulchand M. Shah Vs Panchand J. Shah & 6 Others** [2010] e KLR, and **Daly & Figgis & Co. Advocates Vs Karuturi Networks Ltd & Anr** [2009] e KLR were cited in essence following the court of Appeal decision in **Sharma Vs Uhuru Highway Development Ltd** [2001] 2 EA 530. In those cases it was propounded that where a matter has not come before the High Court regarding taxation eg. by way of plaint to recover costs or a reference under paragraph 11 (above), the court has no jurisdiction to entertain any proceeding coming by a course other than those two. Otherwise the proceeding is a nullity. The two other defendants aligned themselves with this position while the plaintiff did not respond to the preliminary objection. Instead he submitted on his motion dated 29.9.10 against which the objection had been laid.

After considering all the above this court concurs with the decisions in the two High Court cases and follows the principle laid down in the Court of Appeal case. The preliminary objection is upheld. The notice of motion dated 29.9.10 is struck out with costs to the defendants.

Ruling delivered on 22/2/11

J. W. MWERA
JUDGE