



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Miscellaneous Civil Application 626 of 2008**

ISSA & COMPANY ADVOCATES ..... APPLICANT/ADVOCATE  
VERSUS  
GANIJEE GLASS MART LIMITED ..... 1<sup>ST</sup> RESPONDENT/CLIENT  
PAN A FRICAN GLASS INDUSTRIES LIMITED ..... 2<sup>ND</sup> RESPONDENT/CLIENT  
RASHIDA RAJABALI GANIJEE &  
KHADIJA NAJMUDIN GANIJEE ..... 3<sup>RD</sup>  
RESPONDENT/CLIENT  
(EXECUTORS OF THE WILL OF NAJMUDIN JIWAJI GANIJEE)

**RULING**

1. The Notice of Motion dated 12<sup>th</sup> November 2009 was taken out by the Ganijee Glass Mart Limited and Others (herein after referred to as “the Client”) seeking for orders that there be a stay of further proceedings herein and in particular the reference filed by Issa & Company Advocates (herein after referred to as “the Advocate”) pending the determination of the application regarding the amendment or rectification of the decree.
2. This application is premised on the grounds that following a taxation of the bill of costs the Clients have made an application before this court to rectify the decree dated 16<sup>th</sup> May 2003 which will affect the taxation and the reference. These facts in support of this application are explained further by the matters deposed to in the supporting affidavit sworn by **Ijaz Hussein Ganijee** sworn on 12<sup>th</sup> November 2009. According to the Client the Advocate was instructed to defend the execution proceedings in **HCCC NO. 1821 OF 1999**.
3. Judgment had been entered and the instructions were limited to defending a decree. Thus the instruction fees were based on the value of the decree. However the Client maintains that the instructions given to the Advocate were limited to defending the enforcement of the decree and they have applied to rectify the decree and that is why they are applying for the stay of proceedings until the decree is rectified. The outcome of the application to rectify the decree in **HCCC NO.1821 OF 1999** will have a bearing on the bill of costs. That is why the Client is seeking a stay of proceedings. Counsel relied on the case of **Ujaga Singh v Runda Coffee Estates, Ltd EALR 1966 page 263**. It was further argued that the court has discretion in the interest of justice to order stay of proceedings.
3. This application was opposed. Counsel for the Advocate relied on the grounds of opposition on points of law. It was submitted that there are no special circumstances to warrant an order of stay of a reference. The application by the client to amend a decree has nothing to do with the miscellaneous cause between and Advocate and the Client. Instructions were issued to the advocate by the client. It is for the court to decide the reference and establish

whether the instructions were limited to the enforcement of the decree. The advocate is not a party to the amendment of the decree. It would therefore not be in the interest of justice to stay the reference. The advocate has already rendered the services. The client has also benefited from the services but is now trying to block the advocates from their costs. All the decisions cited by the client relate to a stay of proceedings pending an appeal and none relates to a stay of proceedings of a reference.

4. I have considered the rival submissions as summarized above. This application strangely invokes the “inherent powers of this court” under Order 50 rule 1 of the Civil Procedure Rules. This application is seeking for a stay of proceedings namely a reference which the advocates filed in regard to a decision of taxation made on 24<sup>th</sup> February 2009. It is trite that judicial discretion gives the court flexibility to provide definitions according to the specifics of a particular case. In this case there is no set procedure or even decided cases on how the court can stay proceedings filed by way of a reference.
5. However the court can stay proceedings pending appeal and the issue to address is whether the order of stay of proceedings will serve the interest of justice. In deciding whether to order a stay the court should take into account whether the stay order will prejudice the respondent by causing a delay. The merits of the intended action should also be taken into account. In this case the Client contends that they intend to amend the decree in HCCC NO. 1821 OF 1999, which matter involved other parties altogether and the advocate was not a party.
6. The reference involves a determination of the Advocates fees. The Advocates Bill of Costs was taxed and the Advocate was dissatisfied with the decision of the taxing master. The advocate is entitled to file a reference as provided for by the law. I see no justifiable reasons why the advocate should be held back by the Client who intends to challenge or seek to amend the decree in another suit. Accordingly, the notice of motion dated 12<sup>th</sup> November 2009 is disallowed with costs to the Advocate.

**RULING READ AND SIGNED ON 26<sup>TH</sup> MARCH 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**