



1. Civil Practice & Procedure
2. Taxation.
3. Subject of main suit.
 - a) Eviction and demolition of plaintiffs property (business premises) (lock up shop) by defendant municipality.
 - b) Property constructed on a water drainage
 - c) Parties comprise suit (filed 30.7.09) to give access to municipality to drainage as per Engineers Plan. Case marked settled (14.10.09)
 - d) Taxation before taxing master.
 - e) Decision on 11.11.09
 - f) Objection notice 12.11.09 (Rule 11 Advocate Renumeration Rules)
 - g) letter by taxing master 18.11.09
 - h) Item objected to Kshs. 33M inter alia (Item 4, 10, 24)
4. Application for 15.12.09 Section 3, 3a & 63e
 - a) Seeking restraining orders to execute bill.

In reply:

- a) Order should be a stay of execution and not an injunction.
5. Held
- a) Stay of execution to issue till the finalization of appeal to this High Court

6. Case Law:
Nil.

7. Advocates:

Mr. G. Kipkirui Chemoiyai Advocate instructed from the Firm of M/s Chemoiyai & Company Advocates, for the Plaintiffs/Applicants.

Mr. Paul Gicheru Advocate instructed from the Firm of M/s Gicheru & Company Advocates for the Defendant.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
HIGH COURT CIVIL CASE NO. 137 OF 2009
DANIEL CHEBET & 12

OTHERS.....PLAINTIFF
VERSUS
ELDORET MUNICIPAL
COUNCIL.....DEFENDANT

RULING
(application to restrain respondent from executing a bill of costs)
15th December, 2009

I. Background

1. Eviction orders were issued against the 14 plaintiffs from premises where they ran their business known as “lock up” shops by the defendants municipality of Eldoret. The reasons for eviction and subsequent demonstration of their premises was that the construction of their premises was made over a water drainage that was required to be constructed. The said plaintiffs filed suit seeking orders restraining the defendants from their action on 30th July, 2009.
2. On 14th October, 2009 the parties entered into a consent that the plaintiffs were to give access to the defendant the Municipality Council of Eldoret to put in the said drainage. The consent entered compromised the suit becoming the judgment of the court (Mwilu J.)
3. Parties proceeded to taxation before the taxing master and a ruling on the taxation was delivered on 11th November, 2009. Being dissatisfied with some items on the bill of costs including an Item for Kshs. 33,000,000/- as the subject matter, the plaintiffs/applicant filed objection proceedings under rule 11 (Advocate Act) on 23rd November, 2009 to this High Court.
4. On 15th December, 2009 an application seeking restraining orders against the defendant respondents was filed under Section 3, 3A and 63e Civil Procedure Act on ground that they be stopped from executing their bill of costs.

II. Application of 15th December, 2010

5. The respondent opposed this application to restrain them as it amounted to an injunction. This meant that no injunction can issue against them.
6. The applicant/plaintiffs argument had been that before the taxation was heard, there may be an execution.
7. It is correct to note that the orders sought amounts to an injunction under Section 3, 3A & 63e Civil Procedure Act. No such procedure is provided for. What the applicant should realize that he has an application of 23rd November 2009 being objection proceedings. This means that it is in effect an appeal from the taxing master to this High Court on his decisions. It is therefore in order to bring an application under Order XLIV r 4 for a stay of execution pending the hearing of the taxation reference under rules 11(evidence) of the advocates remuneration order.
8. The advocate though does not seem to be aware that after the taxing master has issued his bill, the defendants/ respondents herein must give a **notice of ten days** under order. Before execution is permitted to issue. His application would then be filed on the issue of stay.
9. As an abundant of caution I would make orders that the bill of costs be stayed as to execution till the finalization of the Appeal to this High Court.
10. In order to facilitate this, the taxing master is to give the reasons why in writing he dealt with item 4, 10, 24 and value of Kshs. 33 million in details regardless that she/ held so in their ruling, as provided for under Rules 11(2) of the Advocates Remuneration Act, within 14 days of service of this courts orders.
11. That the application of 23rd November, 2009 to be thereafter set down for hearing.
12. The costs will be in the cause.

Dated this 26th day of May 2010 at Eldoret.

**M. A. ANG'AWA
JUDGE**

Advocates:

Mr. G. Kipkirui Chemoiyai Advocate instructed from the Firm of M/s Chemoiyai & Company Advocates, for the Plaintiffs/Applicants.

Mr. Paul Gicheru Advocate instructed from the Firm of M/s Gicheru & Company Advocates for the Defendant.