

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Case 1231 of 2003

QUEENSWAY AIR SERVICES LIMITEDPLAINTIFF

V E R S U S

THE COMMISSIONER OF INCOME TAXDEFENDANT

R U L I N G

The Applicant herein, **QUEENSWAY AIR SERVICES LIMITED**, has sought by **notice of motion dated 10th November, 2008** an order that a sum of **KShs. 712,657/00** deposited into court by the Respondent, **THE COMMISSIONER OF INCOME TAX**, be released to its advocates. The said amount constitutes the Applicant's taxed costs awarded herein on 11th December, 2003 (Lenaola J). The costs were taxed on 29th January, 2007. The deposit into court was made pursuant to an order of the court of 28th May, 2007 (Nambuye, J) as a condition for enlargement of time to enable the Respondent to file a notice of objection to taxation under **paragraph 11** of the **Advocates (Remuneration) Order**.

The Respondent duly lodged his notice of objection to taxation on 8th August, 2007 within the enlarged time. Reasons for taxation were supplied to the Respondent on 14th May, 2008. But he did not file an application challenging the taxation within 14 days of that date as provided for under paragraph 11(2) of the remuneration order.

The Respondent was served with the present application on 17th November, 2008 (coming up for hearing on 28th January, 2009). He waited until the eve of the hearing, that is, 27th January, 2009, to file and serve a replying affidavit. At the same time he filed an application by notice of motion of the same date seeking extension of time to file an application to challenge the taxation. His plea that his said application be heard first was refused, and the court heard the Applicant's present application.

There is no valid application pending challenging taxation of the Applicant's costs. As such, it would be unjust to keep the Applicant from its money. The replying affidavit does not raise any issue that would disentitle the Applicant to its money at this belated stage.

I will in the circumstances allow the application by notice of motion dated 10th November, 2008 and grant an order in terms of prayer 1 of the application. There will be no order as to costs of the application. Those will be the orders of the court.

DATED AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 20TH DAY OF FEBRUARY, 2009