



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)**

**CIVIL CASE 430 OF 2002**

**RUAHA CONCRETE COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**MANJIT SINGH SETHI ..... 2<sup>ND</sup> PLAINTIFF**

**PERMINDER SINGH SETHI ..... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PARAMOUNT UNIVERSAL BANK LTD ..... 1<sup>ST</sup> DEFENDANT**

**KIRIT KHARKAR ..... 2<sup>ND</sup> DEFENDANT**

**MUSA SAID HASSAN ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

The defendant's bill of costs was taxed on the 16<sup>th</sup> November 2007 by Honorable Mrs. Odero as she then was; she was subsequently appointed a Judge. The applicants/plaintiffs being dissatisfied with the order of taxation filed a reference to the High Court by an application dated 6<sup>th</sup> December 2007. That reference was struck out by the ruling of Muiru J. dated 11<sup>th</sup> May 2009 on the grounds that the provisions of 11(2) of the Advocates Remuneration Order were not complied with.

The dismissal of that application has triggered the filing of the Chamber Summons dated 22<sup>nd</sup> May 2009. The applicants/ plaintiffs are seeking a stay of execution of the taxation order dated 16<sup>th</sup> November 2007, pending the taxation of the bill of costs afresh or the furnishing of the reasons to enable the applicant file a reference against that order of taxation.

This application is premised on the grounds stipulated in the body thereto and the supporting affidavit by **Manjit Singh Sethi** sworn on 22<sup>nd</sup> May 2009. According to the applicants, they are dissatisfied with the ruling delivered on 16<sup>th</sup> November 2007 especially item No.1 being the instruction fees, in all the bills, they applied for reasons in the letter dated 22<sup>nd</sup> November 2007 to enable them file a reference. However before the reasons were furnished, the applicants were served with a notice of execution, thus they filed a reference which was struck out for not having annexed the reasons.

This application was opposed by both counsels for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The judgment in this matter where costs were awarded was rendered in September 2004, that is five years ago, no appeal has been filed against that judgment. Moreover the bill of costs in this matter has been taxed on two previous occasions. On 30<sup>th</sup> April 2007 by Hon. Mrs. Ongeri, Principal Magistrate taxed the bills, the applicants were dissatisfied and they filed a reference. The matter was ordered to be placed before another taxing master.

That is when the taxation proceeded before the then Chief Magistrate, now Justice Odera. The applicants were still not satisfied with the ruling and filed a reference which was struck out. However the applicants letter in which they sought for reasons, they are only contesting the costs relating to Item No.1 on instruction fees in all the bills. The applicants are not contesting the other items, thus the amount awarded under all the other items should be paid immediately. As regards the instructions fees, the suit filed by the applicants and in their own pleadings the subject matter was stated as 75 million. Accordingly, the instruction fees were awarded according to the Advocates Remuneration order. The taxing master was subsequently appointed a Judge, but going through the ruling, it is quite clear; the reasons for the taxation of the bills are clearly stated.

It was submitted by the respondents that the application is not filed for ends of justice because the ruling of the taxing master contains the reasons and if the applicants were genuinely pursuing an assessment of the instruction fees, nothing would have been easier than to file a reference. Counsel for the 1<sup>st</sup> defendant submitted that they had offered to allow a reference by consent by asking the High Court to make an assessment of the instruction fees payable, which offer the applicants were not interested in pursuing.

The applicants are also guilty of inordinate delay in seeking to obtain the taxing officers reasons on the two Items. They only exhibited one letter dated 22<sup>nd</sup> November 2007, it is now 1½ years later and no reminders have been written and so they do not deserve this courts exercise of discretion. The applicants have to satisfy this court that they have an arguable reference. Firstly, there is no reference that has been filed and since they are only objecting to instructions fees, the value of the subject matter was a liquidated sum of Ksh.75 million, the fees payable is determinable with considerable ease. Lastly, this is the third application to frustrate the payment of costs and the court should decline to entertain a multiplicity of applications.

Having set out the summary of the arguments, I agree that it is determinable from the ruling rendered by the taxing master on 16<sup>th</sup> November 2007 how each of the items was taxed, that ruling is self explanatory. However the applicants are insisting the reasons which they applied for by a letter dated 22<sup>nd</sup> November 2007 was never furnished, although they have not done more than just that one letter. It is clear there has been no follow up of the reasons until the respondents took steps to execute for the recovery of the costs awarded.

The other curious thing is, if the applicant's intention is to file a reference regarding the instructions fees as indicated in their letter, counsel for the respondent told this court they even offered to refer the assessment of the instruction fees by consent for reassessment by the High Court, but the applicants have not been keen. While noting the applicants has taken a difficult stance to have the matter referred to the High court by consent which option is available under Advocates Remuneration Order, and also noting that this matter has been taxed twice by two different taxing masters.

I have also considered the merits of the intended reference which according to the applicant's letter is in regard to the instruction fees. The plaintiff was for a liquidated claim, this creates very serious doubts as to the merits of the intended reference, is it meant for ends of justice, or to filibuster the effectual conclusion of this matter. Be that as it may, the applicants say they want their day in court; they should have it but on condition that the amount of the money awarded for all the other items except for the instruction fees be paid to the respondents within 14 days from this ruling. The amount assessed for the instruction fees, be deposited within 30 days from the date of this ruling in an interest earning account to be operated by both advocates for the applicants and the respondents respectively until the determination of the reference. In default the stay order is to lapse and execution to issue.

As I have stated in this ruling, the reasons are very clear from the ruling of the taxing master, the Deputy Registrar should furnish the ruling which contains the reasons to enable the applicants file the reference.

The applicant will also bear the costs of this application.

**RULING READ AND SIGNED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2009**

**M.K. KOOME**

**JUDGE**