

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

MISCELLANEOUS APPLICATION 38 OF 2006

MBUGUA & MBUGUA ADVOCATES.....APPLICANT

VERSUS

KENINDIA ASSURANCE CO. LTD.....RESPONDENT

RULING

The applicant in this proceeding filed an advocate – client bill of costs with a view to having it taxed. The same was taxed by the taxing officer of the court at Kshs.96,335.10. The costs were taxed on 8th June 2007. The respondent was aggrieved by the said taxation and on 15th June 2007, applied to be given reasons by the taxing master to enable it file reference to this Court. The objection to the taxation was lodged in court on 18th June 2007. From the record, it is apparent that the reasons for the taxation were given by the taxing officer on 12th January 2009. It is also apparent that the respondent made no effort to file reference to this court pursuant to the reasons given by the taxing officer. On 19th August 2008, the applicant filed suit before the subordinate court seeking judgment in respect of the taxed costs. Although the respondent filed a defence to the said suit, upon the applicant filing an application for summary judgment, the same was allowed.

Before execution could be levied, the respondent filed an application before this court pursuant to **paragraph 11(4)** of the **Advocates Remuneration Order** seeking orders of the court to stay execution of the order of the taxing officer assessing the costs of the applicant. The respondent further sought orders of the court to stay execution of the order of the taxing officer assessing the costs of the applicant pending the hearing and determination of the reference. The grounds in support of the application are on the face of the application. The application is supported by the annexed affidavit of Regina Kitheka, the legal manager of the respondent. The application is opposed. Joseph Njoroge Mbugua, a partner in the applicant firm swore a replying affidavit in opposition to the application. At the hearing of the application, I heard submissions made by Mr. Omwenga for the respondent and by Mrs. Githaiga for the applicant.

Having heard the rival submissions made, the issue for determination by this court is whether the respondent made a case to enable this court grant it the order sought of stay of execution. The respondent was aggrieved by the decision of the taxing officer in assessing the costs due to the applicant. The respondent filed objection to the said taxation. The objection was filed within the fourteen (14) days provided under **paragraph 11(1)** of the **Advocates Remuneration Order**. From the record, it is apparent that the applicant and the respondent were notified of the date when the reasons were to be given by the taxing officer. According to **paragraph 11(2)** of the **Advocates Remuneration Order**, the respondent was required to file reference to this court within fourteen (14) days after receipt of the reasons.

The respondent did not file reference within the period stipulated by the rules. The respondent now seeks orders of this court to stay execution of the order of the taxing officer on the ground that there is a pending reference to this court. The truth of the matter is that there is no such reference pending before this court. There is no pending application seeking extension of time to enable the respondent file the

reference out of time. It is therefore evident that this court cannot stay execution of the order of the taxing officer assessing the costs of the applicant when there is no pending reference. From my evaluation of the facts of this case, it is clear that the respondent was indolent. It did not pursue its reference to this court within the time provided under the rules. It was apparent that the respondent was forced to move the court when the applicant took precipitate action with a view to recovering the costs that were awarded to it by the taxing officer.

In the premises therefore, I hold that the respondent failed to establish a suitable case for the grant of orders staying execution of the assessment of the advocate's cost by the taxing officer. There is no pending reference before this court to entitle the court grant the orders sought by the respondent. The application is dismissed with costs.

DATED AT NAIROBI THIS 15TH DAY OF JULY 2009

L. KIMARU

JUDGE